

EXHIBIT 1

Rudowitz, Andrew J.

From: Schmidt, J. Maren <mschmidt@ftc.gov>
Sent: Friday, January 22, 2021 3:04 PM
To: Rudowitz, Andrew J.; Kulik, Sarah O'Laughlin; Huyett, Daniel Patrick; 'Jeremy Kasha'; 'Jessica Sutton'; 'Joe Betsko'; 'Kathleen E. Kosiek'; 'Kip Sturgis'; 'Laura Namba'; 'Liz Maag'; 'Michael Goldsmith'; 'Michelle M. Castaneda'; 'Patrice Fatig'; 'Richard Schultz'; 'Saami Zain'; 'Sarah Allen'; 'Tyler Henry'; 'Arlene Leventhal'; 'Beth Finnerty'; Tuttle, Bryce
Cc: Feldman, Brett M.; 'Anthony MacDonald Caputo'; 'Kandis Kovalsky'; 'Stacey Anne Mahoney'; 'Stephen Scannell'; 'talbuquerque@kasowitz.com'; 'William S.D. Cravens'; 'Sarah E. Hsu Wilbur'; 'Noah J. Kaufman'; 'Nick Rendino'; Casey, Christopher H.; Pollack, Jeffrey S.
Subject: RE: FTC, et al. v. Vyera et al. -- Transcripts of Audio Files

AJ and Sarah:

Following up on Sarah's email, I did not say or acknowledge that transcripts we create from the audio files are responsive to Defendants' document requests. I said that we already made clear in our responses and objections that we would not produce post-complaint FTC documents, and you did not make a timely challenge to those objections and responses. We disagree with your arguments and decline your request.

We are not available for a meet and confer today. We could meet on Monday afternoon between 1:00 and 3:00.

Thanks,
Maren

From: Rudowitz, Andrew J. <AJRudowitz@duanemorris.com>
Sent: Friday, January 22, 2021 10:49 AM
To: Kulik, Sarah O'Laughlin <sckulik@duanemorris.com>; Schmidt, J. Maren <mschmidt@ftc.gov>; Huyett, Daniel Patrick <dhuyett@ftc.gov>; 'Jeremy Kasha' <jeremy.kasha@ag.ny.gov>; 'Jessica Sutton' <jsutton2@ncdoj.gov>; 'Joe Betsko' <jbetsko@attorneygeneral.gov>; 'Kathleen E. Kosiek' <kathleen.kosiek@morganlewis.com>; 'Kip Sturgis' <ksturgis@ncdoj.gov>; 'Laura Namba' <Laura.Namba@doj.ca.gov>; 'Liz Maag' <Liz.Maag@ohioattorneygeneral.gov>; 'Michael Goldsmith' <Michael.Goldsmith@doj.ca.gov>; 'Michelle M. Castaneda' <michelle.castaneda@morganlewis.com>; 'Patrice Fatig' <patrice.fatig@ohioattorneygeneral.gov>; 'Richard Schultz' <RSchultz@atg.state.il.us>; 'Saami Zain' <saami.zain@ag.ny.gov>; 'Sarah Allen' <SOAllen@oag.state.va.us>; 'Tyler Henry' <thentry@oag.state.va.us>; 'Arlene Leventhal' <arlene.leventhal@ag.ny.gov>; 'Beth Finnerty' <beth.finnerty@ohioattorneygeneral.gov>; Tuttle, Bryce <btuttle@ftc.gov>
Cc: Feldman, Brett M. <BMFeldman@duanemorris.com>; 'Anthony MacDonald Caputo' <acaputo@kasowitz.com>; 'Kandis Kovalsky' <kkovalsky@khflaw.com>; 'Stacey Anne Mahoney' <stacey.mahoney@morganlewis.com>; 'Stephen Scannell' <sscannell@attorneygeneral.gov>; 'talbuquerque@kasowitz.com' <talbuquerque@kasowitz.com>; 'William S.D. Cravens' <william.cravens@morganlewis.com>; 'Sarah E. Hsu Wilbur' <sarah.wilbur@morganlewis.com>; 'Noah J. Kaufman' <noah.kaufman@morganlewis.com>; 'Nick Rendino' <nrendino@kasowitz.com>; Casey, Christopher H. <CHCasey@duanemorris.com>; Pollack, Jeffrey S. <JSPollack@duanemorris.com>
Subject: RE: FTC, et al. v. Vyera et al. -- Transcripts of Audio Files

Maren,

I am following up on Sarah's email below. Please let us know if you can meet and confer this afternoon, as we intend to submit a letter to the Court today if we are unable resolve the issue. We are available this afternoon any time between 1:00pm and 5:30pm, other than from 2:00pm-2:30pm. Please let us know what time works best for you.

Thank you,

AJ

Andrew John (AJ) Rudowitz

Associate
Duane Morris LLP
P: +1 215 979 1974

From: Kulik, Sarah O'Laughlin <sckulik@duanemorris.com>

Sent: Thursday, January 21, 2021 7:42 PM

To: 'Schmidt, J. Maren' <mschmidt@ftc.gov>; Huyett, Daniel Patrick <dhuyett@ftc.gov>; 'Jeremy Kasha' <jeremy.kasha@ag.ny.gov>; 'Jessica Sutton' <Jsutton2@ncdoj.gov>; 'Joe Betsko' <jbetsko@attorneygeneral.gov>; 'Kathleen E. Kosiek' <kathleen.kosiek@morganlewis.com>; 'Kip Sturgis' <ksturgis@ncdoj.gov>; 'Laura Namba' <Laura.Namba@doj.ca.gov>; 'Liz Maag' <Liz.Maag@ohioattorneygeneral.gov>; 'Michael Goldsmith' <Michael.Goldsmith@doj.ca.gov>; 'Michelle M. Castaneda' <michelle.castaneda@morganlewis.com>; 'Patrice Fatig' <patrice.fatig@ohioattorneygeneral.gov>; 'Richard Schultz' <RSchultz@atg.state.il.us>; 'Saami Zain' <saami.zain@ag.ny.gov>; 'Sarah Allen' <SOAllen@oag.state.va.us>; 'Tyler Henry' <thenry@oag.state.va.us>; 'Arlene Leventhal' <arlene.leventhal@ag.ny.gov>; 'Beth Finnerty' <beth.finnerty@ohioattorneygeneral.gov>; Tuttle, Bryce <btuttle@ftc.gov>

Cc: Feldman, Brett M. <BMFeldman@duanemorris.com>; Rudowitz, Andrew J. <AJRudowitz@duanemorris.com>; 'Anthony MacDonald Caputo' <acaputo@kasowitz.com>; 'Kandis Kovalsky' <kkovalsky@khflaw.com>; 'Stacey Anne Mahoney' <stacey.mahoney@morganlewis.com>; 'Stephen Scannell' <sscannell@attorneygeneral.gov>; 'talbuquerque@kasowitz.com' <talbuquerque@kasowitz.com>; 'William S.D. Cravens' <william.cravens@morganlewis.com>; 'Sarah E. Hsu Wilbur' <sarah.wilbur@morganlewis.com>; 'Noah J. Kaufman' <noah.kaufman@morganlewis.com>; 'Nick Rendino' <nrendino@kasowitz.com>

Subject: RE: FTC, et al. v. Vyera et al. -- Transcripts of Audio Files

Maren:

Happy to explain. As your e-mail this morning acknowledges, the transcripts of the BOP's production of audio files are responsive to Defendants' document requests. You argue that the transcripts constitute work product, but the fact that you chose to transcribe some calls and not others does not vitiate the discoverability of the transcripts that exist. See Fed. R. Civ. P. 34(a)(1). Moreover, the FTC used a transcript as affirmative evidence in the examination of a witness, without producing it in advance of the deposition, which undermines your claim of work product and amplifies the prejudice involved. Without advance production of the transcript, and without an indication of how precisely the transcript was created, Defendants are unable to assess whether the document is what it purports to be. For the FTC to elicit testimony regarding a unproduced document of questionable admissibility not explicitly tied to any piece of evidence in the record prejudices Defendants' ability to defend the claims advanced by the Plaintiffs in this case.

Let us know when you are able to discuss in a meet and confer.

Best,

Sarah

Sarah O'Laughlin Kulik

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From: Schmidt, J. Maren <mschmidt@ftc.gov>

Sent: Thursday, January 21, 2021 12:38 PM

To: Kulik, Sarah O'Laughlin <sckulik@duanemorris.com>; Huyett, Daniel Patrick <dhuyett@ftc.gov>; 'Jeremy Kasha' <jeremy.kasha@ag.ny.gov>; 'Jessica Sutton' <Jsutton2@ncdoj.gov>; 'Joe Betsko' <jbetsko@attorneygeneral.gov>; 'Kathleen E. Kosiek' <kathleen.kosiek@morganlewis.com>; 'Kip Sturgis' <ksturgis@ncdoj.gov>; 'Laura Namba' <Laura.Namba@doj.ca.gov>; 'Liz Maag' <Liz.Maag@ohioattorneygeneral.gov>; 'Michael Goldsmith' <Michael.Goldsmith@doj.ca.gov>; 'Michelle M. Castaneda' <michelle.castaneda@morganlewis.com>; 'Patrice Fatig' <patrice.fatig@ohioattorneygeneral.gov>; 'Richard Schultz' <RSchultz@atg.state.il.us>; 'Saami Zain' <saami.zain@ag.ny.gov>; 'Sarah Allen' <SOAllen@oag.state.va.us>; 'Tyler Henry' <thenry@oag.state.va.us>; 'Arlene Leventhal' <arlene.leventhal@ag.ny.gov>; 'Beth Finnerty' <beth.finnerty@ohioattorneygeneral.gov>; Tuttle, Bryce <btuttle@ftc.gov>

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Subject: RE: FTC, et al. v. Vyera et al. -- Transcripts of Audio Files

Sarah:

Before we schedule a meet and confer, perhaps you could lay out a legal basis for your request.

Thanks,

Maren

From: Kulik, Sarah O'Laughlin <sckulik@duanemorris.com>

Sent: Thursday, January 21, 2021 8:48 AM

To: Schmidt, J. Maren <mschmidt@ftc.gov>; Huyett, Daniel Patrick <dhuyett@ftc.gov>; 'Jeremy Kasha' <jeremy.kasha@ag.ny.gov>; 'Jessica Sutton' <Jsutton2@ncdoj.gov>; 'Joe Betsko' <jbetsko@attorneygeneral.gov>; 'Kathleen E. Kosiek' <kathleen.kosiek@morganlewis.com>; 'Kip Sturgis' <ksturgis@ncdoj.gov>; 'Laura Namba' <Laura.Namba@doj.ca.gov>; 'Liz Maag' <Liz.Maag@ohioattorneygeneral.gov>; 'Michael Goldsmith' <Michael.Goldsmith@doj.ca.gov>; 'Michelle M. Castaneda' <michelle.castaneda@morganlewis.com>; 'Patrice Fatig' <patrice.fatig@ohioattorneygeneral.gov>; 'Richard Schultz' <RSchultz@atg.state.il.us>; 'Saami Zain' <saami.zain@ag.ny.gov>; 'Sarah Allen' <SOAllen@oag.state.va.us>; 'Tyler Henry' <thenry@oag.state.va.us>; 'Arlene Leventhal' <arlene.leventhal@ag.ny.gov>; 'Beth Finnerty' <beth.finnerty@ohioattorneygeneral.gov>; Tuttle, Bryce <btuttle@ftc.gov>

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Subject: RE: FTC, et al. v. Vyera et al. -- Transcripts of Audio Files

Thanks, Maren. Please let us know when you are available for a meet and confer on this issue this week.

From: Schmidt, J. Maren <mschmidt@ftc.gov>

Sent: Thursday, January 21, 2021 8:00 AM

To: Kulik, Sarah O'Laughlin <sckulik@duanemorris.com>; Huyett, Daniel Patrick <dhuyett@ftc.gov>; 'Jeremy Kasha' <jeremy.kasha@ag.ny.gov>; 'Jessica Sutton' <Jsutton2@ncdoj.gov>; 'Joe Betsko' <jbetsko@attorneygeneral.gov>; 'Kathleen E. Kosiek' <kathleen.kosiek@morganlewis.com>; 'Kip Sturgis' <ksturgis@ncdoj.gov>; 'Laura Namba' <Laura.Namba@doj.ca.gov>; 'Liz Maag' <Liz.Maag@ohioattorneygeneral.gov>; 'Michael Goldsmith' <Michael.Goldsmith@doj.ca.gov>; 'Michelle M. Castaneda' <michelle.castaneda@morganlewis.com>; 'Patrice Fatig' <patrice.fatig@ohioattorneygeneral.gov>; 'Richard Schultz' <RSchultz@atg.state.il.us>; 'Saami Zain' <saami.zain@ag.ny.gov>; 'Sarah Allen' <SOAllen@oag.state.va.us>; 'Tyler Henry' <thenry@oag.state.va.us>; 'Arlene Leventhal' <arlene.leventhal@ag.ny.gov>; 'Beth Finnerty' <beth.finnerty@ohioattorneygeneral.gov>; Tuttle, Bryce <btuttle@ftc.gov>

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Subject: RE: FTC, et al. v. Vyera et al. -- Transcripts of Audio Files

Sarah:

As you note below, the FTC has already produced the BOP materials. In our responses and objections to Defendants' document requests, we made clear that we are not producing post-complaint FTC documents, which would include any transcript we choose to create or commission from the BOP audio files. In addition, producing the select transcripts that we chose to create or commission from the BOP audio files would identify which audio files we deemed most relevant and significant to our case, and thus would reveal our litigation strategy. You are free to review the audio files as we have. Thus, there is no prejudice.

Thanks,
Maren

J. Maren Schmidt

FTC Health Care Division

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202.326.3084

From: Kulik, Sarah O'Laughlin <sckulik@duanemorris.com>

Sent: Wednesday, January 20, 2021 6:26 PM

To: Huyett, Daniel Patrick <dhuyett@ftc.gov>; Schmidt, J. Maren <mschmidt@ftc.gov>; 'Jeremy Kasha' <jeremy.kasha@ag.ny.gov>; 'Jessica Sutton' <Jsutton2@ncdoj.gov>; 'Joe Betsko' <jbetsko@attorneygeneral.gov>; 'Kathleen E. Kosiek' <kathleen.kosiek@morganlewis.com>; 'Kip Sturgis' <ksturgis@ncdoj.gov>; 'Laura Namba' <Laura.Namba@doj.ca.gov>; 'Liz Maag' <Liz.Maag@ohioattorneygeneral.gov>; 'Michael Goldsmith' <Michael.Goldsmith@doj.ca.gov>; 'Michelle M. Castaneda' <michelle.castaneda@morganlewis.com>; 'Patrice Fatig' <patrice.fatig@ohioattorneygeneral.gov>; 'Richard Schultz' <RSchultz@atg.state.il.us>; 'Saami Zain' <saami.zain@ag.ny.gov>; 'Sarah Allen' <SOAllen@oag.state.va.us>; 'Tyler Henry' <thenry@oag.state.va.us>; 'Arlene Leventhal' <arlene.leventhal@ag.ny.gov>; 'Beth Finnerty' <beth.finnerty@ohioattorneygeneral.gov>; Tuttle, Bryce

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Subject: RE: FTC, et al. v. Vyera et al. -- Transcripts of Audio Files

Counsel:

I am following up on the below request. Please let us know your position on this matter.

Best,
Sarah

Sarah O'Laughlin Kulik

Associate

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From: Kulik, Sarah O'Laughlin

Sent: Friday, January 15, 2021 5:44 PM

To: 'Daniel Patrick Huyett' <dhuyett@ftc.gov>; 'J. Maren Schmidt' <mschmidt@ftc.gov>; 'Jeremy Kasha' <jeremy.kasha@ag.ny.gov>; 'Jessica Sutton' <Jsutton2@ncdoj.gov>; 'Joe Betsko' <jbetsko@attorneygeneral.gov>; 'Kathleen E. Kosiek' <kathleen.kosiek@morganlewis.com>; 'Kip Sturgis' <ksturgis@ncdoj.gov>; 'Laura Namba' <Laura.Namba@doj.ca.gov>; 'Liz Maag' <Liz.Maag@ohioattorneygeneral.gov>; 'Michael Goldsmith' <Michael.Goldsmith@doj.ca.gov>; 'Michelle M. Castaneda' <michelle.castaneda@morganlewis.com>; 'Patrice Fatig' <patrice.fatig@ohioattorneygeneral.gov>; 'Richard Schultz' <RSchultz@atg.state.il.us>; 'Saami Zain' <saami.zain@ag.ny.gov>; 'Sarah Allen' <SOAllen@oag.state.va.us>; 'Tyler Henry' <thenry@oag.state.va.us>; 'Arlene Leventhal' <arlene.leventhal@ag.ny.gov>; 'Beth Finnerty' <beth.finnerty@ohioattorneygeneral.gov>; 'cc: Bryce Tuttle' <btuttle@ftc.gov>

Cc: Feldman, Brett M. <BMFeldman@duanemorris.com>; Rudowitz, Andrew J. <AJRudowitz@duanemorris.com>; 'Anthony MacDonald Caputo' <acaputo@kasowitz.com>; 'Kandis Kovalsky' <kkovalsky@khflaw.com>; 'Stacey Anne Mahoney' <stacey.mahoney@morganlewis.com>; 'Stephen Scannell' <sscannell@attorneygeneral.gov>; 'talbuquerque@kasowitz.com' <talbuquerque@kasowitz.com>; 'William S.D. Cravens' <william.cravens@morganlewis.com>; 'Sarah E. Hsu Wilbur' <sarah.wilbur@morganlewis.com>; 'Noah J. Kaufman' <noah.kaufman@morganlewis.com>; 'Nick Rendino' <nrendino@kasowitz.com>

Subject: FTC, et al. v. Vyera et al. -- Transcripts of Audio Files

Counsel:

At the deposition of Kevin Mulleady, the Government introduced an exhibit GX-3088. This exhibit was not previously produced in discovery.

GX-3088 is a transcription of a telephone conversation between Mr. Mulleady and Mr. Shkreli. It was transcribed on March 4, 2020. Though not clear from the face of the transcript or from the representations of Mr. Weingarten on the record during Mr. Mulleady's deposition, it appears to be a transcription of an audio file produced by the Federal Bureau of Prisons to the FTC, which the FTC produced in discovery in this litigation. It is not apparent from the exhibit which specific audio file it pertains to.

This transcript, and any transcripts that reflect the contents of any audio files produced to or obtained by the government are responsive to Defendants' document requests – in particular Requests 5 and 12 – and should be produced. The FTC's failure to produce these transcripts, particularly in advance of their use at depositions, prejudices Defendants' ability to defend the claims in this case.

To the extent Plaintiffs intend to use any such transcripts at future depositions, please produce those transcripts as soon as possible. In particular, in light of the fact that several of the audio files involve Mr. Shkreli and/or Mr. Mithani, whose depositions are upcoming, please produce any transcripts that include conversation by Mr. Shkreli and/or Mr. Mithani no later than Wednesday, January 20.

Best,
Sarah

Sarah O'Laughlin Kulik
Associate

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